

AUTHORIZING PAYMENT BY THE FEDERAL GOVERNMENT OF  
THE COST OF MAKING CERTAIN STUDIES NECESSARY TO ASSIST  
THE MENOMINEE TRIBE OF INDIANS TO PREPARE FOR THE  
TERMINATION OF FEDERAL SUPERVISION

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MAY 29, 1956.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. ENGLE, from the Committee on Interior and Insular Affairs  
submitted the following

REPORT

[To accompany H. R. 6218]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 6218) to authorize payment by the Federal Government of the cost of making certain studies necessary to assist the Menominee Tribe of Indians to prepare for the termination of Federal supervision, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That the last sentence of section 6 of the Act entitled "An Act to provide for a per capita distribution of Menominee tribal funds and authorize the withdrawal of the Menominee Tribe from Federal jurisdiction", approved June 17, 1954 (68 Stat. 250), is amended by changing the period at the end thereof to a comma and by adding "and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as the Secretary shall deem necessary to reimburse the tribe for the expenditure of tribal funds pursuant to this section, or for any other expenditure of tribal funds approved by the Secretary for the purpose of carrying out the purposes of this Act."

PURPOSE OF THE BILL

The purpose of H. R. 6218, as amended, introduced by Congressman Laird, is to authorize payment by the Federal Government of the cost of making certain studies necessary to assist the Menominee Tribe of Indians to prepare for the termination of Federal supervision. At present, payment for making these studies is made from tribal funds.

## HISTORY OF THE LEGISLATION

Public Law 399, 83d Congress (68 Stat. 250), approved on June 17 1954, provided for a per capita distribution of Menominee tribal funds and authorized the withdrawal of the Menominee Tribe from Federal jurisdiction not later than December 31, 1958. Section 6 of Public Law 399 authorized the tribe to select and retain the services of qualified management specialists, including tax consultants, to make industrial studies on the Menominee Reservation and to prepare reports, appraisals, and recommendations as may be necessary and desirable by the tribe in connection with the termination of the Federal supervision.

The tribe was directed to have such reports completed not later than December 31, 1957. The necessary specialists were to be retained under contracts entered into between them and authorized representatives of the tribe, subject to approval by the Secretary of the Interior and were to be paid from funds made available by the Secretary.

H. R. 6218, as amended, authorizes the appropriation of sufficient funds from the Federal Treasury to reimburse the tribe for the expenditure of tribal funds pursuant to section 6 of Public Law 399 or for any other expenditure of tribal funds approved by the Secretary for the purpose of carrying out the purpose of said law.

When the Menominee Tribal Council members appeared before the committee, they indicated that satisfactory progress was being made in the development of the reports and plans and that they expected that the plan would be ready for submission to the Secretary of the Interior "early in 1957."

## NEED FOR THE LEGISLATION

The initial use of the tribal funds as presently authorized, subject to reimbursement by the United States, will permit considerably more freedom in contracting for planning services, and will also permit reimbursement to the tribe for contributions to State agencies for special planning services. The tribe has found it necessary to make such contributions, but they are not made under section 6 of the termination act.

H. R. 6218, as introduced, was amended by striking all after the enacting clause and adding language recommended by the Department of the Interior. When this and five other termination acts were enacted during the 83d Congress, no provision was made for the use of Federal funds to finance termination planning but specifically provided for the use of tribal funds for that purpose. The Secretary of the Interior, in recommending enactment of H. R. 6218, as amended, submitted statistics which indicated that the tribe could be expected to continue to incur annual deficits which would have to be paid from its capital reserve. An analysis of the 1954 and 1955 tribal budget is included in the Secretary's report.

The Menominee Tribal Council and the Menominee Indian Study Committee created by the Wisconsin Legislature in 1955 to assist with the termination program recommended the enactment of this legislation. The Wisconsin Legislature has appropriated \$30,000 to the department of taxation to be expended for the purpose of making

a cruise of the Menominee timber and establishing a value on the reservation itself. In addition, \$5,000 has been appropriated to defray the cost of committee meetings and travel. In addition, the State has made available its consultants in the fields of education, public welfare, human rights, highways, taxation, and public health, all of whom are devoting their time to assist in developing the facts needed for an understanding of the problems concerning the Menominee Indians. All of this, however, appears to be inadequate for the extensive research needed by the Wisconsin Indian Study Committee before they can recommend alternatives and propose a course of action by the Menominees.

The favorable report of the Department of the Interior, dated February 24, 1956, is as follows:

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D. C., February 24, 1956.

Hon. CLAIR ENGLE,  
*Chairman, Committee on Interior and Insular Affairs,  
House of Representatives, Washington, D. C.*

MY DEAR MR. ENGLE: Your committee has requested a report on H. R. 6218, a bill to authorize payment by the Federal Government of the cost of making certain studies necessary to assist the Menominee Tribe of Indians to prepare for the termination of Federal supervision.

We have no objection to the enactment of the bill.

Section 6 of the act of June 17, 1954 (68 Stat. 250), which provides for the termination of Federal supervision over the Menominee Tribe, reads as follows:

"SEC. 6. The tribe is authorized to select and retain the services of qualified management specialists, including tax consultants, for the purpose of studying industrial programs on the Menominee Reservation and making such reports or recommendations, including appraisals of Menominee tribal property, as may be desired by the tribe, and to make other studies and reports as may be deemed necessary and desirable by the tribe in connection with the termination of Federal supervision as provided for hereinafter. Such reports shall be completed not later than December 31, 1957. Such specialists are to be retained under contracts entered into between them and authorized representatives of the tribe, subject to approval by the Secretary. Such amounts of Menominee tribal funds as may be required for this purpose shall be made available by the Secretary."

H. R. 6218 would amend the last sentence of section 6 to read as follows:

"There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as the Secretary shall deem necessary to carry out the purposes of this section."

The purpose of the amendment is to provide for the payment of termination planning costs out of Federal funds rather than out of tribal funds. The provision in the present law requiring the use of tribal funds did not originate with this Department, and we have no objection to relieving the tribe of that financial burden if the Congress feels that it is wise to do so.

At the same time Congress enacted the Menominee termination act it also enacted five other termination acts. None of them provided

for the use of Federal funds to finance termination planning, and the Klamath act (act of August 13, 1954, 68 Stat. 718), like the Menominee act, specifically provided for the use of tribal funds for that purpose.

The following facts with respect to the financial status of the Menominee Tribe are submitted for your information:

(1) When the termination act was enacted the tribe had a balance in the United States Treasury of \$9,960,895.

(2) The termination act provided for the payment of a \$1,500 per capita, which required a total of \$4,885,500, and reduced the balance in the United States Treasury to \$5,075,395.

(3) On February 9, 1955, the Solicitor of this Department concluded that the per capita payments commencing in 1941 based upon the fair market stumpage value of the timber cut from the reservation had been improperly computed. A copy of his opinion is attached. A recomputation of those per capita payments required the disbursement of an additional \$2,275,000 (approximate), unless otherwise directed by the tribe. The Department urged the tribe to disburse no more than half of this sum in order to protect the tribe's financial position. The general membership by referendum elected otherwise, and the full payment was made, which reduced the balance in the United States Treasury to \$2,800,395.

(4) On December 31, 1955, the tribal balance in the United States Treasury was approximately \$2,150,000.

(5) In 1954, when the Menominee Termination Act was enacted, the total tribal cash receipts were \$2,421,206.32 and the total tribal obligations were \$2,626,898, leaving a net deficit of \$205,691.68.

(6) In 1955 the total cash receipts were \$2,487,966.22 and the total tribal obligations, exclusive of the \$1,500 per capita referred to in paragraph 2, above, were \$2,529,947, leaving a net deficit of \$41,980.78.

(7) In 1954 the Federal Government spent \$101,022 in gratuity funds for roads, Johnson O'Malley education contract payment, and blister rust control.

(8) In 1955 the Federal Government spent \$152,958 in gratuity funds for the same purposes and for the additional purpose of adult education.

(9) In 1956 the Federal Government has budgeted the expenditure of \$376,756 for the same purposes plus the additional purpose of the Superintendent's salary. The major portion of the increase is due to adult education and vocational training, as authorized by the Congress for tribes subject to termination legislation.

(10) The foregoing figures indicate that the tribe can be expected to continue to incur annual deficits which must be paid out of its capital reserve.

In the event your committee recommends the enactment of the bill, we suggest that it be revised to read as follows: "section 6 of the Act entitled 'An Act to provide for a per capita distribution of Menominee tribal funds and authorize the withdrawal of the Menominee Tribe from Federal jurisdiction', approved June 17, 1954 (68 Stat. 250), is amended by changing the period at the end thereof to a comma and by adding 'and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as the Secretary shall deem necessary to reimburse the tribe for the expenditure of tribal funds pursuant to this section, or for



any other expenditure of tribal funds approved by the Secretary for the purpose of carrying out the purposes of this Act'."

The initial use of the tribal funds as presently authorized, subject to reimbursement by the United States, will permit considerably more freedom in contracting for planning services, and will also permit reimbursement to the tribe for contributions to State agencies for special planning services. The tribe has found it necessary to make such contributions, but they are not made under section 6 of the termination act.

The Bureau of the Budget has advised us that there is no objection to the submission of this report to your committee.

Sincerely yours,

WESLEY A. D'EWART,  
*Assistant Secretary of the Interior.*

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SOLICITOR,  
Washington, D. C., February 9, 1956.

Memorandum to: Commissioner, Bureau of Indian Affairs.

From: Acting Solicitor.

Subject: Determination of per capita payments to Menominee Indians under the act of March 28, 1908 (35 Stat. 51) as amended by the act of June 15, 1934 (48 Stat. 964).

In your memorandum of December 30, 1954, you requested the opinion of this office as to whether per capita payments made to Menominee Indians pursuant to the acts quoted above as a matter of law have been properly calculated and, if not, as to the proper method of their calculation. Attached to your memorandum was a memorandum dated September 7, 1954, to you from the Branch of Forestry discussing these issues.

Briefly, the 1908 act (*supra*) provided for the establishment of a timber operation on the Menominee Reservation. It authorized the cutting annually of specified amounts of timber, directed that a sawmill and other buildings and equipment necessary to the manufacture of lumber products be erected on the reservation, authorized the sale of logs, lumber and lumber products, and directed that the net proceeds from such sales be deposited in the Treasury and bear interest at the rate of 4 percent per annum, the interest to be used for the benefit of the Indians in such manner as the Secretary of the Interior might prescribe. Section 4 of that act authorized the Secretary to pay out of the funds of the Menominee Indians all the necessary expenses for the conduct of such operations including the preservation of the forest. It appears that every year or two thereafter, at the request of the Menominee Indians, the Congress enacted legislation providing for specific per capita payments to the Menominees (78 Congressional Record 8230, 8231). To avoid further recurring requests for such legislation and to provide in lieu thereof legislation of a permanent type authorizing per capita payments to be made to the Menominee Indians upon the basis of a statutory formula, in 1934 the Congress amended section 4 of the 1908 act to read as follows:

"The Secretary of the Interior shall at the end of each fiscal year ascertain and fix the fair market stumpage value of the fully matured

and ripened green timber cut on said reservation during the fiscal year and shall during the succeeding fiscal year pay said amount in equal shares to each member of the Menominee Tribe of Indians, living and on the tribal rolls, on the last day of said fiscal year: *Provided*, That said amount so distributed during any fiscal year shall not exceed the amount actually earned from timber operations on said reservation during the previous fiscal year. The expenditures proposed for the purposes specified herein shall be submitted to the tribal council, or its authorized business committee, for its advance review and approval" (48 Stat. 964).

From the information contained in the memorandum of the Branch of Forestry, *supra*, it appears that at first per capita payments made under the 1934 amendment were based on estimated volumes of stumpage used. Later, the Second Deficiency Appropriation Act, 1940 (54 Stat. 628, 642), provided for a lump sum per capita payment to be made to the Indians in lieu of the amounts which would have been due under the 1934 act for the fair market stumpage value of timber cut during the fiscal years 1940 and 1941.

Commencing in 1941 and continuing to date, however, per capita payments have been made annually which were intended to comply with the provisions of the 1934 amendment to the 1903 act. It is my understanding that such payments have been computed on an annual basis as follows:

From the total dollar income of the complete timber operation there has been deducted the dollar cost of carrying on such operation.<sup>1</sup> From the net cash income thus determined, there has been subtracted as an item of cost of sale and as a bookkeeping transaction the fair market stumpage value of the fully matured and ripened green timber cut on the reservation during the fiscal year involved and the resulting figure was reflected in the books of account as "Operating profit." For each fiscal year there was then paid out as per capita payments either such stumpage value (reflected as "Stumpage income" in the bookkeeping accounts) or the "Operating profit," whichever was less.

In my opinion, such a procedure for the calculation of the amounts available for per capita payments to the Menominee Indians does not conform to the requirements of the 1934 amendment. It will be observed that the amendment requires primarily that the stumpage value is to be paid to the Indians, subject only to the limitation of the proviso. The proviso, in turn, requires that the amount distributed during any fiscal year "shall not exceed the amount actually earned from timber operations on said reservation during the previous fiscal year." The amount actually earned from timber operations on said reservation is the woods operation income (called stumpage income) plus the mill and manufacturing income (called operating profit). To require that the value of stumpage be deducted as an item of cost before determining whether the total operation sustained a profit or a loss is to ignore the fact that the woods operation is an integral part of the total timber operation of the tribe.

The question is whether Congress intended that the stumpage value should be a capital item which the accountant should enter as a

<sup>1</sup> Throughout this memorandum it is assumed, for purposes of illustration, that the books of the timber operation are kept on a cash basis. Such assumption is not intended to reflect any legal opinion as to the propriety of keeping such books on an accrual basis.

depletion figure when the timber is cut, or whether it should be considered as income from the entire timber operation. In other words, should it be paid out as part of the gross operating profit or retained in the depletion account for distribution on liquidation? The logging operation on the Menominee Reservation has been conducted on a sustained-yield basis which results in no depletion of their timber capital asset.

It is my opinion that Congress intended that the fair market stumpage value should be distributed annually in equal shares to each member of the tribe, but in the event that their mill operations result in any year in a gross operating profit which is less than the stumpage value of the timber cut, the distribution should be limited to such gross operating profit. When the operations result in a gross operating profit greater than the stumpage value, the stumpage value should be distributed and the difference should be credited to the capital account.<sup>2</sup> Therefore, the method used for distribution of the profits since 1941 has not been correctly reflecting the congressional intent of the act.

J. REUEL ARMSTRONG,  
*Acting Solicitor.*

The Committee on Interior and Insular Affairs recommends enactment of H. R. 6218, as amended.

#### CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

#### ACT OF JUNE 17, 1954 (68 STAT. 250)

The purpose of this Act is to provide for orderly termination of Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin.

SEC. 2. For the purposes of this Act—

- (a) "Tribe" means the Menominee Indian Tribe of Wisconsin;
- (b) "Secretary" means the Secretary of the Interior.

SEC. 3. At midnight of the date of enactment of this Act the roll of the tribe maintained pursuant to the Act of June 15, 1934 (48 Stat. 965), as amended by the Act of July 14, 1939 (53 Stat. 1003), shall be closed and no child born thereafter shall be eligible for enrollment: *Provided*, That applicants for enrollment in the tribe shall have three months from the date the roll is closed in which to submit *applications* for enrollment: *Provided further*, That the tribe shall have three months thereafter in which to approve or disapprove any application for enrollment: *Provided further*, That any applicant whose application is not approved by the tribe within six months from the date of enactment of this Act may, within three months thereafter, file with the Secretary an appeal from the failure of the tribe to approve his application or from the disapproval of his application, as the case

<sup>2</sup> The amount to be actually distributed, of course, will then turn upon the tribe's action taken in accordance with the last sentence of section 4 as quoted above.

may be. The decision of the Secretary on such appeal shall be final and conclusive. When the Secretary has made decisions on all appeals, he shall issue and publish in the Federal Register a Proclamation of Final Closure of the roll of the tribe and the final roll of the members. Effective upon the date of such proclamation, the rights or beneficial interests of each person whose name appears on the roll shall constitute personal property and shall be evidenced by a certificate of beneficial interest which shall be issued by the tribe. Such interests shall be distributable in accordance with the laws of the State of Wisconsin. Such interests shall be alienable only in accordance with such regulations as may be adopted by the tribe.

SEC. 4. Section 6 of the Act of June 15, 1934 (48 Stat. 965, 966), is hereby repealed.

SEC. 5. The Secretary is authorized and directed, as soon as practicable after the passage of this Act, to pay from such funds as are deposited to the credit of the tribe in the Treasury of the United States \$1,500 to each member of the tribe on the rolls of the tribe on the date of this Act. Any other person whose application for enrollment on the rolls of the tribe is subsequently approved, pursuant to the terms of section 3 hereof, shall, after enrollment, be paid a like sum of \$1,500: *Provided*, That such payments shall be made first from any funds on deposit in the Treasury of the United States to the credit of the Menominee Indian Tribe drawing interest at the rate of 5 per centum, and thereafter from the Menominee judgment fund, symbol 14X7142.

SEC. 6. The tribe is authorized to select and retain the services of qualified management specialists, including tax consultants, for the purpose of studying industrial programs on the Menominee Reservation and making such reports or recommendations, including appraisals of Menominee tribal property, as may be desired by the tribe, and to make other studies and reports as may be deemed necessary and desirable by the tribe in connection with the termination of Federal supervision as provided for hereinafter. Such reports shall be completed not later than December 31, 1957. Such specialists are to be retained under contracts entered into between them and authorized representatives of the tribe, subject to approval by the Secretary. Such amounts of Menominee tribal funds as may be required for this purpose shall be made available by the Secretary. *There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as the Secretary shall deem necessary to carry out the purposes of this section.*

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